



BUSINESS, LABOR & ECONOMIC AFFAIRS  
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## UNEMPLOYMENT INSURANCE DIVISION ADMINISTRATIVE RULES OF MONTANA

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#### 24.11.460 DISQUALIFICATION FOR MISCONDUCT

(1) Misconduct as used in 39-51-2303, MCA, includes, but is not limited to, the following conduct by a claimant:

(a) willful or wanton disregard of the rights, title, and interests of a fellow employee or the employer;

(b) deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;

(c) carelessness or negligence that causes or would likely cause serious bodily harm to the employer or fellow employee;  
or

(d) carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The term misconduct does not necessarily include:

(a) inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;

(b) inadvertence or ordinary negligence in isolated instances;  
or

(c) good faith errors in judgment or discretion.

(History: Sec. 39-51-301, 39-51-302 MCA; IMP, Sec. 39-51-2303 MCA; NEW, 1988 MAR p. 2723, Eff. 1/1/89.)



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#### 24.11.461 SPECIFIC ACTS OF MISCONDUCT

(1) The following acts are considered misconduct because the acts signify a willful and wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include:

(a) insubordination showing a deliberate, willful or purposeful refusal to follow the reasonable directions or instructions of the employer;

(b) repeated inexcusable tardiness following warnings by the employer;

(c) dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception or lying;

(d) false statements made as part of a job application process, including, but not limited to deliberate falsification of the individual's work record, educational or licensure achievements;

(e) repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;

(f) deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(g) violation of a company rule if the rule is reasonable and

if the claimant knew or should have known of the existence of the rule; and

(h) violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

(History: Sec. 39-51-301, 39-51-302 MCA; IMP, Sec. 39-51-2303 MCA; NEW, 1988 MAR p. 2723, Eff. 1/1/89.)

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#### 24.11.462 OFF-DUTY CONDUCT

(1) While misconduct usually occurs during the claimant's normal working hours, "off-duty" conduct may constitute misconduct if it meets the criteria in ARM 24.11.460 and if such conduct:

(a) significantly and adversely affects the claimant's ability and capacity to perform job duties; and

(b) significantly and adversely affects the employer's business to a substantial degree.

(2) The connection between the misconduct and its effect on the employer's business must be reasonable and discernible. Speculation as to adverse effect upon the employer's business is not sufficient.

(3) The employer must demonstrate by a preponderance of the evidence that the off-duty conduct significantly affected the employment relationship.

(History: Sec. 39-51-301, 39-51-302 MCA; IMP, Sec. 39-51-2303 MCA; NEW, 1988 MAR p. 2723, Eff. 1/1/89.)

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